



Southern District of New York

Chambers of
CECELIA G. MORRIS
United States Bankruptcy Judge

Poughkeepsie Division
355 Main Street
Poughkeepsie, New York 12601
(845) 452-4200

March 24, 2015

Ms. Alfredia Pruitt
4499 Beacon Hill Drive
Lilburn, GA 30047

Re: Adv. P. 13-1350
Complaint against Clerk of Court

Dear Ms. Pruitt:

I have come to the conclusion that your complaint is wholly without merit after having received, reviewed and investigated your allegations regarding the clerk's office's purported failure to enter a default against defendants who did not file an answer to your complaint or motion to dismiss within the time prescribed by the federal rules.

The adversary proceeding commenced by your complaint was subject to an order of the bankruptcy court altering the time periods for certain adversary proceedings filed in the Residential Capital, LLC case. Those procedures were set forth in the Supplemental AP Procedures (the "Procedures") filed in that case. The Procedures provided, among other things, that

3. Extension of Answer or Response Deadlines. Notwithstanding the time periods prescribed by the Bankruptcy Rules or Local Rules, the following extensions will apply except for any other date fixed by order of the Court: The date by which the Debtors and other named defendants will be required to answer or otherwise respond to the complaint filed in the AP Action or any motion filed in the AP Action shall be extended to and including the date that is thirty (30) days following the Pre-Trial Status Conference (defined below). In addition, no party to the AP Action may file any motion or answer, or respond in respect to the complaint filed in the AP Action during this period. To the extent the Debtors or any other defendant has answered or otherwise responded to the complaint filed in the AP Action, the AP Plaintiff's deadline to respond shall be extended to and including the date that is thirty (30) days following the Pre-Trial Status Conference, each subject to further extensions as may be agreed upon by the parties or ordered by the Court.



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One day after the filing of your amended complaint, the defendants filed and served you with the Procedures, as required by the Procedures, with the following Schedule (see ECF No. 3 *Notice of Applicability of the Order Approving Mandatory Supplemental AP Procedures for AP Actions*):

1. Debtors will file and serve the Notice of Applicability by: May 30, 2013 (or if that date falls on a weekend or holiday, by the next business day).
2. AP Plaintiff to provide AP Plaintiff Contact Information by: June 7, 2013
3. Parties to schedule and conduct an Initial Conference by: July 18, 2013.
4. Progress Reports to be filed by: July 29, 2013.
5. Debtors to schedule Pre-Trial Status Conference by August 21, 2013 Omnibus Hearing date.
6. Deadline to file and serve an answer or response to the AP Action complaint is extended to no earlier than [a date to be determined].

In addition, a stipulation was so ordered providing: the defendants file their Motion to Dismiss Complaint by October 4, 2013, the plaintiff file opposition to the Motion by November 4, 2013; defendants to file a reply by November 18, 2013. (See ECF No. 25). The defendants timely filed their motion to dismiss on October 4, 2013 (See ECF No. 26). Accordingly, the defendants were not in default.

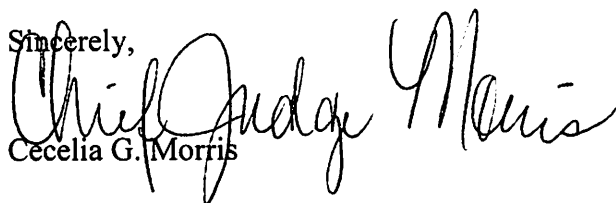
You filed a response to the defendants' motion to dismiss. (See ECF No. 33). Judge Glenn held a hearing on the motion on December 17, 2013, at which time you appeared telephonically and argued your case. (See Transcript of Hearing ECF No. 36).

Judge Glenn dismissed your complaint on January 23, 2014. (See ECF No. 37). You appealed the dismissal order and a case was opened in the district court. (See ECF No. 46). At that point, the bankruptcy court no longer had jurisdiction over the adversary proceeding. A copy of your original request for entry of default against the defendants was received by the court and docketed as a copy. (See ECF No. 47). An entry of default was erroneously docketed against both defendants and vacated almost immediately upon discovery of the error. (See ECF No. 48, 49, 50). The entry of default was in error because the defendants had not defaulted **and** the bankruptcy court no longer had jurisdiction over the matter.

The district court affirmed the bankruptcy court order dismissing the case and dismissed the appeal. (See ECF No. 55). Your option at that point was to appeal the district court's decision and order. The matter is no longer pending in the bankruptcy court.

Based on the foregoing, I find no error has been committed by the Office of the Clerk of the Court.

Sincerely,


Cecelia G. Morris